

COSTELLO & MAINS, P.C.

By: Drake P Bearden, Jr.
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Mount Laurel, NJ 08054
(856) 727-9700
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WONGA MAQAGI

v.

HORIZON LAMPS, INC, et al.

Plaintiff,

Defendants.

CIVIL ACTION

No. 5:13-cv-01573-JLS

Electronically filed

**NOTICE OF MOTION TO WITHDRAW
AS COUNSEL FOR PLAINTIFF**

To: Michael R. Miller, Esquire
Margolis Edelstein
170 Independence Mall West
Suite 400E
Philadelphia, PA 19106

Mr. Wonga Maqagi
9536 Princeton Square Blvd S. Apt 908
Jacksonville, FL 32256

PLEASE TAKE NOTICE that on the ___ day of June, 2014, at a time to be set by the Court, at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA, 19106, the law offices of Costello & Mains, P.C., attorneys for Plaintiff in this action, will move the Court, pursuant to Rule 5.1 of the Local Rules of the United States District Court, for an Order granting leave for Costello & Mains, P.C. to withdraw its appearance

as counsel for plaintiff in this action and to permit plaintiff to either proceed pro se or substitute counsel.

PLEASE TAKE FURTHER NOTICE that Plaintiff shall rely upon the accompanying Certification of Counsel and Memorandum of Law.

COSTELLO & MAINS, P.C.

By: /s Drake P. Bearden, Jr.
Drake P. Bearden, Jr.

18000 Horizon Way
Suite 800
Mount Laurel, NJ 08054
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(856) 727-9700
(856) 727-9797 (facsimile)

Attorneys for Plaintiffs

Dated: May 16, 2014

COSTELLO & MAINS, P.C.

By: Drake P Bearden, Jr.
18000 Horizon Way, Suite 800
Mount Laurel, NJ 08054
(856) 727-9700
Attorneys for Plaintiff

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CERTIFICATION OF COUNSEL

I, Drake P. Bearden, Jr., being of full age, hereby certify as follows:

1. I, Drake P. Bearden, Jr., am an attorney-at-law licensed to practice in the State of Pennsylvania and before the United States District Court for the Eastern District of Pennsylvania. I am an associate in the law firm of Costello & Mains, P.C., attorneys for plaintiff in the above-captioned action, and the attorney primarily responsible for the litigation of this matter. As such I am fully familiar with the facts stated herein.

2. The current fact discovery end date is July 30, 2014, having been extended by the Court in anticipation of the within motion.

3. At this time, unfortunately, the relationship between plaintiff and this firm has become irretrievably damaged and there has been a breakdown in communication.

4. As a result, this firm's continued representation of plaintiff has become unreasonably difficult.

5. In order to avoid the disclosure of attorney-client privileged communications, we are not providing details of the breakdown, but will provide the Court with an ex-parte certification at the Court's request.

I make this Certification in support of the Motion to Withdraw filed by Plaintiffs' Attorneys. I hereby certify that the statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

s/ Drake P. Bearden, Jr.
Drake P. Bearden, Jr.

Dated: May 16, 2014

COSTELLO & MAINS, P.C.

By: Drake P Bearden, Jr.
18000 Horizon Way, Suite 800
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Attorneys for Plaintiff

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**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO WITHDRAW AS COUNSEL**

On the Brief: Drake P. Bearden, Jr.

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PROCEDURAL HISTORY

The instant action commenced with the filing of Plaintiff's Complaint in this Court on March 26, 2013. Pre-trial factual discovery is currently set to close on July 30, 2014.

STATEMENT OF FACTS

This is an action alleging violation of the Pennsylvania Human Rights Act, the Family Medical Leave Act, the Americans with Disabilities Act and Title VII of the Civil Rights Act resulting from plaintiff's employment with defendant.

Unfortunately, as set forth Certification of Drake P. Bearden, Jr., the relationship between plaintiff and this firm has been rendered irretrievably damaged and our continued representation of plaintiff unreasonably difficult.

LEGAL ARGUMENT

I. THERE EXISTS GOOD CAUSE FOR COUNSEL TO WITHDRAW ITS APPEARANCE IN THIS ACTION.

A. Counsel Has Met the Requirements of Pennsylvania RPC 1.16(b) for Withdrawal

Pursuant to Local Rule 5.1(c) of the Local Rules of the United States District Court for the Eastern District of Pennsylvania ("Local Rule 5.1"), if there is no substitution of counsel, an attorney may not withdraw his/her appearance without leave of court. The standard for withdrawal is set forth in Rule of Professional Conduct 1.16(b), which provides that "...a lawyer may withdraw from representing a client if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client." R.P.C. 1.16(b)(6). In addition, a lawyer may withdraw if "other good cause for withdrawal exists." R.P.C. 1.16(b)(7).

Under the facts of this matter, the relationship between plaintiff and this law firm has been rendered unreasonably difficult by the breakdown in the relationship and communications.

It is within the District Court's discretion to grant a motion to withdraw. *Ohntrup v. Firearms Center, Inc.*, 802 F.2d 676, 679 (3d Cir. 1986).

As discussed above, the reason for withdrawal comports with RPC 1.16(b) inasmuch as plaintiff has failed in an obligation owed to counsel and rendered our continued representation unreasonably difficult. There is unlikely to be any prejudice to other litigants, harm to the administration of justice or delay in the resolution of this action as the result of withdrawal of counsel. Even if some reasonable extension of the time for factual discovery is sought by plaintiff and granted by the Court, there is little likelihood that there will be any significant delay to the resolution of this matter or any harm to the administration of justice.

CONCLUSION

For the reasons set forth above, the undersigned counsel for Plaintiff respectfully requests that the Court enter an Order granting leave for Costello & Mains, P.C. to withdraw as counsel for plaintiff in this action and permitting plaintiff to proceed *pro se* or through new counsel.

Respectfully submitted,

COSTELLO & MAINS, P.C.

By: /s Drake P. Bearden, Jr.
Drake P. Bearden, Jr.
18000 Horizon Way
Suite 800
Mount Laurel, NJ 08054
dbearden@costellomains.com
(856) 727-9700
(856) 727-9797 (facsimile)

Dated: May 16, 2014

Attorneys for Plaintiffs

COSTELLO & MAINS, P.C.

By: Drake P Bearden, Jr.
18000 Horizon Way, Suite 800
Mount Laurel, NJ 08054
(856) 727-9700
Attorneys for Plaintiff

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CERTIFICATION OF SERVICE

Drake P. Bearden, Jr., Esquire, hereby certifies as follows:

1. I am an attorney-at-law admitted to practice in the State of New Jersey and in this Court and an associate in the law firm of Costello & Mains, P.C., counsel for Plaintiffs. As such, I am familiar with the facts set forth herein.
2. On this date, I caused the following documents to be filed electronically with the Court:
 - a. Notice of Motion for Withdrawal of Counsel;
 - b. Brief in Support of Motion for Withdrawal;
 - c. Certification of Drake P. Bearden, Jr.;
 - d. Proposed Order permitting withdrawal of counsel; and
 - e. Certification of Service.

3. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

4. Additionally, on today's date, I caused a copy of the documents referenced in paragraph 2 above to be mailed to Plaintiff, by regular and certified mail, at the following address:

Mr. Wonga Maqagi
9536 Princeton Square Blvd S. Apt 908
Jacksonville, FL 32256

I certify under penalty of perjury that the foregoing is true and correct.

COSTELLO & MAINS, P.C.

By: /s Drake P. Bearden, Jr.
Drake P. Bearden, Jr.

Dated: May 16, 2014

COSTELLO & MAINS, P.C.

By: Drake P Bearden, Jr.
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PROPOSED ORDER

This matter having been brought before the Court by Drake P. Bearden, Jr., Esquire on a Motion to Permit the Withdrawal of Costello & Mains, P.C. as counsel for Plaintiff, and the Court having considered the submissions and arguments of the parties, if any, and good cause appearing,

It is on this _____ day of _____, 2014, hereby ORDERED as follows:

1. The motion to permit Costello & Mains, P.C. to withdraw as counsel is GRANTED;
2. Plaintiff Wonga Maqagi from this time forward shall be his own attorney *pro se*;
3. Costello & Mains, P.C. shall provide to defense counsel the last known address and telephone number for plaintiff;
4. Costello & Mains, P.C. shall serve a copy of this Order by regular mail upon Plaintiff at

his last known addresses.

,U.S.M.J.